IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Writ Appeals Nos.405, 412 to 414 of 2003
and 3513 of 2004

The Principal Chief Conservator of Forests
Pangal Buildings, Saidapet, Chennai. ..1st Appellant in
WA.No.405/2003.

The State of Tamil Nadu rep. By its
Secretary to Government,
Environment and Forest Department,
Fort St. George, Chennai 9. ..1st Appellant in
WA.No.412 to 414 of 2003
and WA.3513/2004.

The District Forest Officer,
Tirupathur Division, Tirupathur. ..Appellant 2 in
WA.Nos.405, 412 to 414/2003.

The District Forest Officer,
Salem Division, Salem 7. ..Appellant 2 in
WA.No.3513/2004.

-Vs-

M/s.Gupta Exports represented by its Partner,
M.Krishna Kishore/M.M.Gupta,
Gupta Buildings, Estern State,
Eluru 534001. ..Respondent in WA.Nos.405, 412,
414 of 2003 and 3513/2004.

M/s.Lavanya Enterprises represented
by its Partner, M.Krishna Kishore
Gupta Buildings, Eastern Street,
Eluru A.P ..Respondent in WA.No.413/2003.

Writ Appeals filed under clause 15 of Letters Patent against the orders of learned single Judges of this Court dated 25.10.2002 made in writ petitions No.14418 of 2000, 7499, 7500, 8359 of 2000 and order dated 06.08.2004 made in writ petition No.7073 of 1997.

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WP.No.14418/2000 in WA.No.405 of 2003:

This petition presented to this court under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd Respondent in its communication dated 23.1.2000 in C.No.5804/99/S. Quash the same and consequently forbear the respondents from making any claim or demand from the petitioner for the payment of Sales Tax, demurrage charge and / or penal interest in respect of purchase of 15 M/ts of Sandal wood made by the petitioner in the auction conducted by the 2nd Respondent on 28.4.1999 and confirmed by the 2nd Respondent by order dated 16.5.1999 in C.No.5804/99-S.

WP.No.7499/2000 in WA.No.412 of 2003:

This petition presented to this court under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd Respondent culminating in its communication dated 1.4.2000 in C.No.13402/99-S quash the same and consequently forbear the respondents from making any claim or demand from the petitioner for the payment of Sales Tax, demurrage charge and / or penal interest in respect of purchase of 35 MTs of Sandal wood made by the petitioner in the auction conducted by the 2nd Respondent on 28.4.1999 and confirmed by the 2nd Respondent by order dated 20.11.1999 in C.No. C.No.13402/99-S.

WP.No.7500 of 2000 in W.A.No.413/2003:

This petition presented to this court under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd Respondent culminating in its communication dated as 23.1.2000 in C.No.1136/99-S quash the same and consequently forbear the respondents from making any claim or demand from the petitioner for the payment of Sales Tax, demurrage charges and / or penal interest in respect of purchase of 57.5 MTS of Sandalwood made by the petitioner in the auction conducted by the 2nd respondent and confirmed by the 2nd respondent by order dated 2.2.99 in C.No.1136/99-S.

WP.No.8359 of 2000 in WA.414/2003:

This petition presented to this court under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent relating to the order dated 20.11.99 in C.13402/99-S and quash the same with respect to the demand for Sales Tax and to direct the respondents to accept the form H filed by the petitioner after the export is over without insisting for payment of Sales Tax and any surcharge thereon in respect of the Sandalwood material sold to the petitioner in the auction conducted by the 2nd respondent in respect of 35 MTS of Sandalwood as confirmed by the 2nd respondent order dated 20.11.99 in C.No.13402/99-S

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WP.No.7073/1997 in WA.No.3513/2004 :

This petition presented to this court under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent culminating in the order dated 30.04.1997 in proceeding in the order dated 30.04.1997 in proceedings C.No.10821/96-S quash the same and direct the respondents to accept the Form H filed by the petitioner. After the export is over without insisting for payment of Sales Tax and surcharge or any other charges or claims and to issue such further directions as may be deemed appropriate in the circumstances of the case.

For Appellants : Mr.S.Ramasamy, Addl. Advocate General assisted by Mr.S.N.Kribanandan AGP [Taxes] counsel for Appellant in all the Appeal.

For Respondents : Mr.A.L.Somayaji, Senior counsel for M/s.Anand Das Gupta counsel for Respondent in WA.No.405/03, 412 to 413/03.

Mr.K.S.Natarajan counsel for the respondent in WA.No.3513/04.

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN, J.)

Writ Appeal No.405 of 2003 is filed against the order of the learned single Judge dated 25.10.2002 allowing the writ petition No.14418 of 2000 which was filed for quashing the proceedings of the District Forest Officer, Tirupathur, dated 23.01.2000 in C.No.5804/99/S and forbearing the respondent, the Principal Chief Conservator of the Forests, Chennai and the District Forest Officer, Thirupathur Division from making any claim or demand from the writ petitioner for payment of sales tax at 8% and penal interest in respect of purchase of 15 Mts of sandalwood made by the petitioner in the auction held on 28.04.1999. By that order impugned in the writ petition, the District Forest Officer, Thirupathur Division has informed the writ petitioner that as per the condition No.12(i)(ii)(iii) of the Sandal Wood sales notice in C.No.2860/99S dated 21.03.1999, an amount of Rs.11,36,500/- already paid by the petitioner on 28.04.1999 be lapsed to the Government and 15 metric tonnes of sandal wood purchased by the petitioner on 28.04.1999 in lot Nos.14, 38 and 40C, be resold at the petitioner's risk in public auction.

2. Writ Appeals Nos.412 to 415 of 2003 are filed against the order dated 25.10.2002 allowing writ petitions Nos.7499, 7500 and 8359 of 2000 filed by the respondents herein seeking for the relief of writ of certiorarified mandamus calling for the records of the second respondent,

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the District forest Officer culminating in its communications dated 01.04.2000, 23.01.2000 and 20.11.1999 respectively and to quash the same and consequently forbear the respondents from making any claim or demand from the petitioner for payment of sales tax, demurrage charges or penal interest in respect of purchase of sandal wood made by the petitioner in the auction conducted and confirmed on 20.11.1999, and 02.02.1999.

3. Writ Appeal No.3513 of 2004 was filed against the order dated 06.08.2004 allowing writ petition No.7073 of 1997 wherein the respondent herein has sought for the relief of quashing the order dated 30.04.1997 of the second appellant by which the second appellant forfeited the amount paid by the respondent in a sum of Rs.60,00,000/- for the purchase of sandal wood.

4. These cases were directed to be disposed of as a batch by the order of this Court dated 29.01.2003 as the facts of the case, dispute, arguments for and against are one and the same. Writ appeal No.405 of 2003 is taken up as a typical case. For the sake of convenience, the parties are hereinafter referred to in the manner they were referred to in the writ petition.

5. The writ petitioner (relating to WA.405/2003) was a partnership firm engaged in the business of processing and exporting sandal wood. The petitioner claimed that it had received a specific export order dated 20.12.1998 for sandalwood chips to be exported to HondKong. The petitioner had participated in the auction dated 28.04.1999 conducted by the second respondent, the District Forest Officer as per the auction notice dated 21.03.1999. The petitioner was declared as a successful bidder in respect of 15 metric tonnes of sandal wood for the bid amount of Rs.51,29,000/-. The petitioner paid a sum of Rs.1,00,000/- by way of earnest money deposit and a further sum of Rs.10,36,500/- representing 20% of the sale amount as required by the sale notice dated 21.03.1999. The petitioner claimed that inasmuch as the purchase was made for the purpose of meeting the prior export order, the petitioner was exempted from paying sales tax as per the provisions contained in section 5(3) of the Central Sales Tax Act, 1956. However, by the sale confirmation order dated 16.05.1999 which was received by the petitioner on 29.05.1999, the petitioner was called upon to pay certain amount which included a sum of Rs.4,11,346/- towards sales tax. The second respondent insisted for payment of the entire amount including the sales tax liability. Not accepting the demand, the petitioner filed writ petition No.15094 of 1999, which was disposed of by order of this Court dated 14.09.1999 by observing that the claim of the petitioner that it was entitled for exemption of sales tax, if it was made for the purpose of export sale and that particular quantity was entitled for exemption could be considered by the District Forest Officer on merits and in accordance with law within a period of one month from the date of receipt of a copy of the order.

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6. Eventhough the above said order was passed after hearing the Special Government Pleader on 15.09.1999, on the very next day, the second respondent called upon the petitioner to settle the amounts within seven days indicating that on failure, action would be taken to forfeit the amount already deposited. Subsequently, a telegram was also issued by the second respondent, the District Forest Officer. On receipt of such a telegram, the petitioner gave a reply telegram by which the attention of the second respondent was drawn to the order passed by this Court dated 14.09.1999 and requested to consider its request regarding exemption of sales tax as directed by this Court. On 29.09.1999 the second respondent passed an order directing the petitioner to pay the balace sale amount, penal interest, demurrages, etc., as per the sale condition by referring to the order impugned in writ petition No.15094 of 1999. By that letter, the petitioner was further directed to produce foreign buyer agreement executed before the date of sale for availing exemption of payment of 8% of sales tax or to produce bank guarantee for the amount of tax valid for an year. The petitioner was further directed to file an undertaking letter to the effect that the export records should be produced within three months and directed to complete the above formalities and lift the sandal wood immediately.

7. On receipt of the above said letter the petitioner immediately wrote back on 04.10.1999 again referring to the order passed by this Court stating that the demand of penal interest, demurrage was not justified in as much as the goods were yet to be handed over to it. The District Forest Officer gave a reply on 02.11.1999 stating that the request to release the sandal wood without payment of penal interest and demurrage was not acceptable. Subsequently, the District Forest Officer again wrote a letter directing the petitioner to pay sales tax due, penal interest and demurrage along with other dues. The petitioner again gave a reply reiterating about the order passed by this Court and the fact that the petitioner had participated in the auction for meeting the export order and the demand of penal interest and demurrage charges were unustified. The correspondence continued and ultimately on 23.01.2000 an order was passed forfeiting the amount already paid. That order was challenged by the petitioner by filing writ petition No.14418 of 2000.

8. Upon hearing the counsel on either side and upon perusing the material placed before the Court, the learned single Judge disposed of the writ petition with certain directions which read as follows :

1. The direction regarding forfeiture is quashed.
2. The petitioner should furnish a bank guarantee to meet the evenutal liability of sales tax and to keep such bank guarantee alive for one year.
3. The petitioner is further required to make payments as indicated in the confirmation letter except the direction regarding payment of sales tax. The bank guarantee and such payment should be made within a period of one month from the date of communication of the order.

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4. If the aforesaid conditions are complied with by the petitioner, the respondents should deliver the goods within a period of one month from the date of furnishing bank guarantee and the other amounts payable by the petitioner. The respondent should not claim any demurrage or penalty.
5. The petitioner is required to establish before the concerned authority that it is not liable to pay sales tax under section 5(3) of the Central Sales Tax Act with respect to the sandal wood purchased pursuant to the auction dated 28.04.1999. This should be done within a period of five months from today. If the petitioner is not able to establish that it is entitled to the benefit of exemption sales tax, the respondent may enforce the bank guarantee and realise the amount after the lapse of the aforesaid period of five months. On the other hand, if the petitioner is able to establish its case that it is not liable to pay the sales tax, the bank guarantee should be returned to the petitioner."

Subject to the above conditions, the writ petition was allowed.

9. Aggrived by this order of the learned single Judge, writ appeal No.405 of 2003 is filed by the respondent Department.

10. The learned Additional Advocate General, though originally submitted before this Court that the issue in these cases is covered by the decision of the Supreme Court in Civil Appeal Nos.826 and 829 of 2001 made on 02.05.2006, subsequently, took a different stand and started arguing that the petitioner participated in the auction accepting the conditions in the sale notice and breached the condition in making the payment of sales tax. Breach of contract cannot be the subject matter of a writ petition. He further contended that the petitioner not only paid the Earnest Money Deposit, but also paid 20% of the sale amount as required in the auction notice thus having acted upon the sale notice, the petitioner cannot maintain a writ petition wriggling out from its contractual obligations. After the confirmation of the sale in favour of the petitioner a concluded contract came into existence and the impugned order of forfeiture was passed in accordance with the terms of sale notice. As per the condition No.25 of the sale notice, the petitioner has to pay sales tax as per the rates which are in force along with the first instalment of the purchase price. The sale of sandal wood is a local sale and therefore, tax has to be paid as per the Tamil Nadu General Sales Tax Act. As per condition No.9 of the sale notice the petitioner has to pay 25% of the sale amount as the first instalment within 15 days from the date of confirmation and another 25% within 30 days from the date of receipt of confirmation order and the balance of 50% less the Earnest Money Deposit already paid has to be paid within 45 days. If there is any breach, the respondent is entitled to charge penal interest and if the sandal woods were not removed within the stipulated period, the petitioner is liable to pay demurrage.

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11. However, the learned counsel appearing for the writ petitioner submitted that in an identical set of facts, a Division Bench of this Court in respect of the petitioner's sister concern, in writ appeals Nos.94 to 96 of 2000 considered the issue and granted the relief in favour of the auction purchaser on certain terms and conditions. The learned single Judge has followed the judgment of the Division Bench and recorded those conditions in his order in the writ petition and as such the contentions raised by the respondent that there is a concluded contract and a writ petition cannot be maintained has to be rejected. As a matter of fact, the contention of the respondent that sales tax at 8% under the Tamil Nadu General Sales Tax Act has to be paid by the petitioner and the other contention that the petitioner is liable to pay penal, demurrage charges have to be rejected as the petitioner was ready to comply with the directions given by the learned single Judge following the judgment of the Division Bench referred to supra. It was further stated before this Court that the Division Bench judgment in writ appeals Nos.94 to 96 of 2000 was taken to the Supreme Court by the department in Civil Appeal No.826 & 829 of 2001. In the meantime, the petitioner and the respondent complied with the directions and the Supreme Court taking note of the fact that the Department itself found that the purchase was made pursuant to the prior foreign order, granted the relief to the auction purchaser and accepted the view taken by this Court. He prayed for dismissal of the appeal.

12. Heard the learned counsel on either side and perused the materials available on record.

13. There is no dispute that the petitioner was the successful bidder and paid the Earnest Money Deposit and 20% of the bid amount as required by the sale notice. The one and the only dispute is that whether the petitioner is entitled to exemption from payment of sales tax under Section 5(3) of the Central Sales Tax Act. It is the claim of the petitioner that the petitioner is entitled to exemption under section 5(3) of the Central Sales Tax Act as the purchase was made for export in pursuance of a prior export order. It is contended on behalf of the respondent State that the successful bidder has to pay sales tax at 8% under the Tamil Nadu General Sales Tax Act as per the terms of the sale notice. The condition on which reliance has been placed by the Forest Department for demanding the sales tax at 8% is to the following effect :

> "25. The purchaser should pay the Forest Department in one lumpsum a Sales Tax/Income Tax at the rates in force at the time of confirmation of the sale on the full purchase amount along with the first instalment of the purchase price."

There is no dispute of payment of income tax in this case. The dispute is regarding the liability of the purchaser to pay sales tax. As per the conditions, sales tax at the rate in force at the time of confirmation of sale on the full purchase amount has to be made. The condition stated above cannot be regarded as contended by the Forest Department that the sales tax at 8% under the Tamil Nadu General Sales Tax Act has to be paid.

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Sales tax has to be paid at the rate in force at the time of confirmation of sale. But the question whether the petitioner is liable to pay sales tax or exempted in view of its contention that the purchase was covered under section 5(3) of the Central Sales Tax Act is a question of fact and has to be proved with evidence, we are of the view that the issue requires consideration by the appropriate authority i.e., the Commercial Taxes Department at the time of making assessment over the Forest Department. The respondent Forest Department cannot resolve the issue as to the entitlement of exemption or otherwise of the petitioner under section 5(3) of the Central Sales Tax Act.

14. Having regard to the nature of the dispute in collection of sales tax in the auction being conducted by the Forest Department, the Special Commissioner and the Commissioner of Commercial Taxes issued a letter dated 16.09.1998 to the Principal Chief Conservator of Forests, which has been extracted in paragraph 4 of the order of the learned single Judge and for the sake of convenience the same is reproduced here :

> "... In respect of the claim of exemption under section 5(3) that claim has to be made by the Forest Department in the A 10 returns filed enclosing documentary evidence. As a precaution, the Forest Department may accept bank guarantee at the time of auction sale from the successful bidders who claim that the purchase was for the purpose of fulfilling prior agreement from the foreign buyer. A time limit of three months may be fixed by the Forest Department to get documentary evidence from the buyer that the goods were actually exported along with Form 'H'. When such Form 'H' and other documents were presented to the assessing officer by the Forest Department and are found to be in order by the assessing officer, exemption can be granted on such transactions and the Forest Department may return the bank guarantee. Wherever there is no proof to claim the exemption provided under section 5(3) of the Central Sales Tax Act, the Forest Department may encash the Bank guarantee and remit the amount to the Commercial Tax Department ....."

15. When such a clear guidance and guidelines have been given by the Commercial Taxes Department, there is no force in the contention of the respondent that the petitioner has to pay sales tax at 8% as per the Tamil Nadu General Sales Tax Act along with first instalment of bid amount. The Division Bench by its order dated 26.04.2000 made in W.As.94 to 96 of 2000 considered an identical claim made by the sister concern of the petitioner, which has been defended on behalf of the Forest Department by contending that the purchaser has not established that the purchase of sandal wood was for export sale and it was an auction in general. As per condition No.27 of the sale notice, the purchaser should pay the intra-State sales tax on the date of confirmation of sale, The purchaser therein was not having any valid licence to export goods so as to enable it to claim the benefit under section 5(3) of the Central Sales Tax Act on the date of sale and it was not established that the sale was for the purpose of export based on earlier order obtained from the foreign buyers. The Division Bench, after referring to the section 5(3) of the Act, considered

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its applicability by referring to the decision of the Supreme Court in the case of Mohd. Serajuddin v. State of Orissa, 36 STC 136 and the decision in the case of Consolidated Coffee Ltd. vs. Coffee Board, Bangalore AIR 1980 SC 1468, held that if the petitioner was able to establish that it purchased the goods pursuant to an agreement or order under which the goods were to be exported in compliance with such an agreement or order, it was entitled to the benefit under section 5(3) and it need not pay sales tax. The other contention of the Forest Department that at the time of conclusion of sale, the purchaser has not produced any document to establish the existence of prior contract of foreign buyer was rejected by observing that merely because the appellant had not produced certain documents at the time of completion of sale, it would not change the character of sale if really such a sale was in the course of export and also pointed out that there was no such condition of establishing existence of such an agreement in the auction notice. Ultimately the Division Bench concluded that as the purchaser has come forward with the plea that the purchase of sandal wood by it in the public auction was in pursuance of an agreement with the foreign buyers, the objection raised by the Department that the purchaser has not produced any document at the time of conclusion of sale and so they could not claim any benefit under section 5(3) of the said Act, in view of the condition No.27 of the sale notice, could not be countenanced. Having held so, the Division Bench also observed that in view of the ratio laid down by the Supreme Court in the judgments referred to supra, the purchaser was entitled to the benefit under section 5(3) of the Act. The other contention raised that the purchaser has accepted the terms and conditions and participated in the auction and purchased sandal wood cannot thereafter wriggle out and dispute the terms under Article 226 of the Constitution has been answered in para 16 of the judgment which was to the effect that it was not in dispute that if the purchaser satisfied the requirement of section 5(3) of the Act he was entitled to the benefit under the said provision. The contract could not stand in the way of the purchaser in getting the staturoty benefit. No contract tends to circumwent the benefit given under the law. The Bench further observed that no contract would be enforced which would be contrary to the general policy of the law or was detrimental to the interest of the public. The said observations apply to the present case in all fours.

16. Hence, we are of the view that the order of the learned single Judge which is impugned in the writ appeal requires no interference.

17. The learned Additional Advocate General has submitted that the sandal woods which are the subject matter of the first writ appeal are available with the respondent and in respect of other cases, the sandal wood were already sold and are not available for delivery.

18. This contention also cannot be countenanced for the reason that after obtaining the orders from this Court in writ petition, the petitioner has taken out 24 demand drafts - 14 demand drafts each for a sum of Rs.9,00,000/-, bearing Nos.993328 to 993330, 993332 to 993340; 993361 and 993362; one demand draft for a sum of Rs.5,92,500/- bearing

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No.993341, one demand draft for Rs.1,92,500/- bearing No.993327; one demand draft for Rs.7,87,900/- bearing No.993331; one demand draft for Rs.2,00,000/- bearing No.993363 - all drawn in Denak Bank, Nungambakkam; 3 demand drafts each for a sum of Rs.9,00,000/- , bearing Nos.501139 to 501140 and one demand draft for a sum of Rs.2,00,000/- bearing No.501141 drawn in State Bank of Bikoner & Jaipur, Mylapore branch; one demand draft for Rs.1,50,00,000/- bearing No.062548 drawn in State Bank of India, Commercial Branch; one demand draft for Rs.2,00,000/- bearing No.111672 drawn in State Bank of India, Eluru Branch - totalling to a sum of Rs.3,24,72,900/- and handed over to the respondent. Though the respondent originally accepted the same, subsequently returned them on the premise that they have filed writ appeals against the orders. Subsequently, the respondent has brought 35 metric tonnes of Jajpokal I class, 32 metric tonnes of Milwa Chilta and 0.5 metric tonnes of bagardad for public auction under sale notices dated 26.11.2002 and 18.12.2002. The petitioner fearing that the sandal wood which are the subject matter of the writ petitions would also be sold by the respondent, filed writ petitions Nos.2391 to 2393 of 2003 for issuance of writ of certiorarified mandamus to call for the records relating to the sale notices and quash the same and forbearing the respondent from bringing the sandal wood for auction without effecting delivery to the petitioner of the quantity of the goods for which the petitioner has become successful bidder. In those writ petitions, originally interim orders were granted in favour of the petitioner. The respondent department filed a counter and an application to vacate the interim order. In that affidavit, in paragraph 5, the respondent has in unequivocal terms stated as follows :

> "...In any event, if ultimately the writ petitioner succeeds in the appeal, then it is the duty of the State to effect delivery of sandal wood for which purpose, there is sandalwood and the apprehension that sandalwood will be vanished is untenable. I state that if ultimately, it is found that the petitioner is entitled to delivery of sandalwood it will be definitely delivered to him."

The Division Bench by its order dated 27.03.2003 accepting the undertaking and recording the above extracted portion of the affidavit, vacated the interim order.

19. Thus, in a solemn affidavit the respondent having accepted and agreed to deliver the goods if the petitioner succeeded in the appeal, it is not open to them to contend that the goods are not available for delivery. Here again, we are of the view that the stand of the respondents cannot be appreciated. The learned single Judge has passed the order following the Division Bench judgment in which all the points which have been taken in the writ petition have been raised, met and rejected against the respondents. The writ petitioner has all along been fighting before this Court by filing writ petition after writ petition claiming the statutory benefit, that too, relying on the judgment of the Division Bench of this Court. In addition to that, the Commercial Taxes Department has also given clear guidelines to accept the bank guarantee whenever successful bidder claimed benefit under section 5(3) to release

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the goods by its order dated 16.09.1998. But inspite of all these precedent and guidelines, the respondents were not inclined to accept the bank guarantee to deliver the goods to the petitioner, but ventured in filing appeals after appeals. Hence, the equity is in favour of the writ petitioner. Further, it is not as if the Forest Department is not having any sandal wood for disposal. Periodically they are auctioning sandal wood in several metric tonnes. That is the reason the District Forest Officer has sworn the solemn affidavit and assured that the goods would be delivered on the petitioner succeeding in the appeals. Hence, the contention of the Additional Advocate General that the goods are not available for delivery cannot be accepted. The State has to deliver the goods from its stock as undertaken by the District Forest Officer in the solemn affidavit dated 10.03.2003 filed before this Court.

20. In respect of demand of penalty and demurrage, the clause containing the demurrage proceeds that on the purchasers presenting challan as proof that 50 % of sale value having been paid, the fact of remittance would be verified with the bank by asking for the triplicate copy of the challan or bank advice. On the receipt of which a proportion of the wood purchased will be weighed in his or in the agent's presence and the quantity handed over to him. If, however, proof is produced that the entire sale value has been paid, the whole quantity of sandalwood purchased will be weighed and handed over after due verification of the factum of remittance as above. The purchaser must take delivery or remove the whole of the goods sold to him within 75 days from the date of receipt of confirmation order. If he fails to take delivery of woods after all the amounts due on such wood are paid within the voidah, the wood would be kept in double lock or single lock as the case may be until such time as agreed to take delivery thereof and he shall be liable to pay a demurrage Rs.30/- per tonne per day for each day the wood so kept in double lock or single lock beyond 75 days.

21. On the reading of the above condition it is clear that on payment of the entire amount by the successful bidder and on handing over of the goods to the purchaser, if the purchaser failed to take delivery within the voidah date, the woods would have to be kept in double or single lock as the case may be untill such time as agreed to take delivery thereof and the purchaser shall be liable to pay a demurrage Rs.30/- per tonne per day for each day the wood kept in double or single lock beyond 75 days from the date of confirmation.

22. In this case, except the payment of earnest money deposit and 20% of the bid amount, the other amounts are yet to be paid and are in dispute. Even the other amounts paid pursuant to the direction issued by this Court by way of demand drafts have been returned to the petitioner. The goods were neither handed over to the petitioner nor kept in double or single lock by the respondents. Hence, there is no question of demurrage. So is the demand made for penalty also not tenable. This issue has also been considered by the Division Bench of this Court which we have referred to above and confirmed by the apex Court in Civil Appeals No.826 and 829 of 2001 decided on 02.05.2006 wherein it was held as follows :

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"Accordingly, the High Court directed the appellant to release the goods, if not already done so, without payment of any demurrage charges or penalty. The respondent was not responsible for the delay, the delay, if any, was caused due to the unreasonable stand taken by the appellant.

We agree with the view taken by the High Court that the respondent could not be fastened with the liability to pay the demurrage charges or penalty, as the respondent was not responsible for the delay. Delay, if any, was caused by the appellant in not releasing the goods in spite of the specific directions issued by the High Court to that effect."

23. In this case, the High Court directed the respondent to release the goods on obtaining the bank guarantee for the disputed amount, but inspite of the bank guarantee being furnished, the goods were not released and as a matter of fact, a contempt petition has also been filed against the respondent. Hence, on this point also, we are of the view that the respondent is not legally entitled to claim penal charges and demurrage charges.

24. For the foregoing reasons, the writ appeals are dismissed confirming the order made in the respective writ petitions. The conditions imposed by the learned single Judge shall be followed by either of the parties. The time for furnishing bank guarantee and payment as directed in condition No.3 in the impugned order stands extended by one month from the date of communication of this order. No costs. The connected miscellaneous petitions are consequently dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To
1. The Secretary to Government,
State of Tamil Nadu,
Environment and Forest Department,
Fort St. George, Chennai 9.

2. The District Forest Officer,
Tiruppattur division, Tiruppatur.

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3. The Principal Chief conservator of
Forests, Panagal Buildings,
Saidapet, Chennai 15.

4. The District Forest Officer,
Salem Division, Salem 7.

+ 1 CC To Spl. Government Pleader [Forest] SR Nos.64335

+ 3 Ccs to Mr.Anand Das Gupta Advocate SR Nos.64752, 64754 and 64755

+ 1 CC To Mr.K.S.Natarajan, Advocate SR NO.64753

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gp/31.10.

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